

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CELTIC WOMAN LTD.,

Plaintiff,

v.

CELTIC THUNDER, LTD.,
CELTIC MAN LTD., SHARON
BROWNE, WLIW LLC,
ALIGN ENTERTAINMENT GROUP LLC,
and GUSTAVO SAGASTUME,

Defendants.

Civil Action No. 08-CV-0066

**DECLARATION OF
JONATHAN HOCHWALD**

I, Jonathan Hochwald, under penalty of perjury, pursuant to 28 U.S.C. § 1746, declare:

1. I am the President of Madstone Productions ("Madstone") in New York, NY. I submit this declaration in support of Plaintiff Celtic Woman Ltd.'s Motion for Preliminary Injunction. The information in this declaration is based upon my personal knowledge.

2. I have approximately 20 years of experience in the live entertainment industry, including the marketing, promotion, oversight and tour-routing of live shows and musical acts.

3. Madstone is the North American Tour Promoter of the highly acclaimed and internationally recognized stage show and musical ensemble entitled "CELTIC WOMAN." CELTIC WOMAN features five female singers performing a mix of traditional Celtic, classical, theatrical and popular music in a large theatrical setting with an orchestra, choral singers, and highly professional and complex stage and lighting designs.

4. I had a meeting with David Kavanagh, the Chief Executive Officer of Celtic Woman Ltd., concerning the CELTIC WOMAN production in December 2004. I was employed

by Clear Channel Communications at the time. Following this meeting, I began working on the marketing and promotion of the CELTIC WOMAN show in the United States and continued to do so throughout 2005.

5. After forming my own company, Madstone, in December 2005, I continued to work closely with David Kavanagh, the CEO of Celtic Woman Ltd., on the marketing, promotion, oversight, and tour-routing of the CELTIC WOMAN show.

6. Madstone promotes the performance of the CELTIC WOMAN show throughout the United States, negotiates contracts with Public Broadcasting System ("PBS") television stations for the broadcast of taped performances of the CELTIC WOMAN show, and provides tickets to live performances of the CELTIC WOMAN show to distribute as part of the PBS pledge drives. I customarily interact with representatives from the CELTIC WOMAN organization, PBS, and venues throughout the United States where the CELTIC WOMAN production is presented.

7. During the last three years, the CELTIC WOMAN show has achieved widespread popularity and public acclaim in the United States.

8. Three CELTIC WOMAN recorded performances, respectively titled *Celtic Woman*, *Celtic Woman: A Christmas Celebration*, and *Celtic Woman: A New Journey*, have been released as albums on CDs and in audiovisual format on DVDs.¹

9. CDs and DVDs featuring CELTIC WOMAN productions have sold over 3 million copies in the United States. The first CELTIC WOMAN album entitled "*Celtic Woman*" has gone platinum in the U.S. (selling over 1 million copies). The second and third CELTIC WOMAN albums entitled "*Celtic Woman: A Christmas Celebration*" and "*Celtic Woman: A*

¹ Copies of these CDs and DVDs are attached to the Declaration of David Kavanagh.

New Journey” have attained gold status in the U.S. (selling over 500,000 copies). DVDs of CELTIC WOMAN performances have sold over 750,000 copies in the United States.

10. Since its debut, the CELTIC WOMAN show has been broadcast over 3,400 times on 316 different PBS stations.

11. To date, there have been six very successful CELTIC WOMAN tours in the United States, which have sold out venues such as New York’s Radio City Music Hall and Carnegie Hall, Boston’s Opera House, and Los Angeles’ Greek Theater. Total ticket sales for these tours are approximately 600,000. The dates and tickets sales of each tours are as follows:

- a. Celtic Woman – Summer 2005 Tour (July 20 to August 14, 2005) with approximate ticket sales of 49,000.
- b. Celtic Woman – Fall 2005 Tour (October 5 to November 13, 2005) with approximate ticket sales of 66,000.
- c. Celtic Woman – Spring 2006 Tour (March 8 to May 7, 2006) with approximate ticket sales of 105,000.
- d. Celtic Woman – Summer 2006 Tour (July 11 to August 1, 2006) with approximate ticket sales of 33,000.
- e. Celtic Woman: A New Journey – Spring 2007 Tour (February 14 to June 29, 2007) with approximate ticket sales of 279,000.
- f. Celtic Woman: A New Journey – Fall 2007 Tour (October 10 to November 17, 2007) with approximate ticket sales of 66,000.

12. The featured performers in the CELTIC WOMAN production have appeared on many television shows with nationwide audiences such as *The Today Show*, *Live with Regis & Kelly*, *The Megan Mullaly Show*, *The Martha Stewart Show* and on *Brian Boitano’s NBC Skating Spectacular on New Year’s Day 2007*.

13. The popularity of the CELTIC WOMAN production in the United States is due to the hard work and money spent by its owners, producers, and promoters including Madstone. It also is due in substantial part to the national exposure the show received each year through PBS

television station broadcasts, where CELTIC WOMAN set fundraising records for pledge drives and developed a national following.

14. In the Spring 2007, I learned that Sharon Browne was intending to replicate the CELTIC WOMAN stage production in Ireland using males as featured performers under the tentative working title CELTIC MAN.

15. On October 3-5, 2007, I attended a PBS Development Conference in Palm Desert, California (the "Conference") for the purpose of promoting an upcoming CELTIC WOMAN tour in the United States. The Conference was attended by 800-900 people, comprised of representatives and television programmers from hundreds of independent PBS stations in the United States, and people seeking to sell goods and services to PBS stations.

16. CELTIC WOMAN had a booth at the Conference, which was operated by me, David Kavanagh, and Maggie Seidel, a Tour Promoter for Madstone. At the Conference, I attended information sessions and distributed copies of CELTIC WOMAN CDs and DVDs and pamphlets with upcoming CELTIC WOMAN tour dates in 2008.

17. On the first day of the Conference, all attendees were provided with tote bags, which included a promotional DVD and other promotional materials for a new show called CELTIC MAN (hereinafter, "CELTIC MAN Promo Video"). The CELTIC MAN Promo Video was provided by WLIW LLC ("WLIW"), an independent PBS station in New York. The CELTIC MAN Promo Video advertises a CELTIC MAN debut performance scheduled to be broadcast in the United States by WLIW in March 2008.²

18. Madstone has no affiliation with CELTIC MAN.

² A copy of the CELTIC MAN Promo Video is attached to the Declaration of David Kavanagh.

19. I viewed the CELTIC MAN Promo Video at the Conference. CELTIC MAN features five male singers performing music in a large theatrical setting with an orchestra, choral singers, and complex stage and lighting designs – *i.e.*, it virtually replicates CELTIC WOMAN in a male format and targets the same audience.

20. The CELTIC MAN Promo Video makes prominent use of the trademark CELTIC WOMAN in addition to the trademark CELTIC MAN, including an opening screen credit that recites the following:

Frame 1:	CELTIC MAN
	IN CELTIC THUNDER THE SHOW
Frame 2:	BROUGHT TO YOU BY WLIW AND PEP
Frame 3:	AND SHARON BROWNE, ORIGINAL CREATOR AND PRODUCER OF CELTIC WOMAN

21. During the Conference, approximately 50 different PBS delegates approached the CELTIC WOMAN booth and made statements to CELTIC WOMAN representatives such as:

- Do you have any more information on CELTIC MAN?
- We saw the materials for your new show.
- Don't you think the concepts are too close to one another to work?
- Is there going to be a tour with tickets?
- Is it the same kind of music?
- Can we expect the same deal?
- Congratulations on your new show.

22. These PBS delegates had mistakenly assumed that CELTIC MAN was associated with, sponsored by, or affiliated with CELTIC WOMAN and Celtic Woman Ltd. They had assumed that CELTIC MAN was a "spin-off" of CELTIC WOMAN.

23. When Mr. Kavanagh, Ms. Seidel, or I informed the PBS delegates that CELTIC MAN and CELTIC WOMAN were not affiliated, and that we did not know any details about the CELTIC MAN show, the PBS delegates reacted with incredulity and amazement. The PBS delegates told us that they could not believe that CELTIC MAN and CELTIC WOMAN were not affiliated because the names were so similar.

24. Two PBS delegates said to us that CELTIC MAN looked like a "rip-off" of CELTIC WOMAN after we had told them that CELTIC MAN and CELTIC WOMAN were not affiliated.

25. Another PBS delegate told us at the Conference that a CELTIC MAN representative named Vicki Wright suggested that her Denver PBS station should broadcast CELTIC MAN immediately following the broadcast of CELTIC WOMAN "because the audience is already there."

26. On December 11, 2007, a major press release was issued announcing the CELTIC MAN performing group and stage show. The title of the press release was "Creator of the Best Selling Irish Musical Phenomenon 'Celtic Woman' Launches Brand New Show."³

27. Gustavo Sagastume is a consultant to WLIW. Mr. Sagastume formerly worked for PBS at its headquarters in Washington, D.C., and during this time I worked with him on the promotion of the CELTIC WOMAN show.

28. Mr. Sagastume is now working with WLIW to promote the CELTIC MAN show, which is scheduled to be broadcast by WLIW in March 2008.

29. I recently learned that Mr. Sagastume is calling other PBS television stations in an attempt to convince them to broadcast the CELTIC MAN show.

³ A copy of the December 11, 2007 press release is attached to the Declaration of David Kavanagh.

30. I also recently learned that a full-page advertisement for the CELTIC MAN show in the Current Newspaper, a newspaper which has a paid circulation of 5,000 to 6,000 copies and a readership estimated at twice that number including program buyers, managers, producers, educational specialists, fundraisers and other professionals in public television and radio in the United States, as well as a variety of independent producers, state and federal policymakers, station trustees and others – *i.e.*, the heart of the United States market for the CELTIC WOMAN show. This advertisement prominently states that the CELTIC MAN show is “from the creator of CELTIC WOMAN.”⁴

31. The name CELTIC MAN is virtually identical to Plaintiff’s registered trademark CELTIC WOMAN, and those marks are being used in connection with identical entertainment products and services in the same narrow genre of Celtic music.

32. Defendants’ use of the name CELTIC MAN caused enormous actual confusion among the PBS delegates at the Conference. Confusion among experienced and knowledgeable people in the trade makes it a virtual certainty that the general public, viewing the scheduled CELTIC MAN PBS Special in March 2008, will be similarly misled to believe that the CELTIC MAN production is sponsored by, associated with, or affiliated with CELTIC WOMAN and Celtic Woman Ltd.

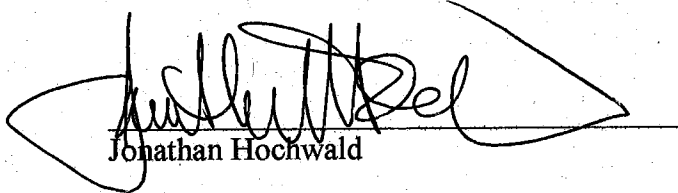
33. The likelihood of confusion is made even more certain by the association between CELTIC WOMAN and CELTIC MAN in the promotional materials which Defendants have used in the previously-described opening screen credit of the CELTIC MAN Promo Video, in the December 11, 2007 press release, and in the advertisement in the Current Newspaper.

⁴ A copy of this advertisement is attached to the Declaration of David Kavanagh.

34. Defendants are attempting to create a false association with CELTIC WOMAN as a platform by which to launch an unrelated show.

35. The owners and promoters of the CELTIC WOMAN show have no control over the quality of the CELTIC MAN show. As a consequence, the favorable reputation and goodwill of CELTIC WOMAN is at risk because it is now dependent upon the success or failure of another show with which it has no affiliation.

I declare under penalty of perjury this 8th day of January 2008 that the foregoing is true and correct.


Jonathan Hochwald

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2008, I caused a true and correct copy of the foregoing Plaintiff Celtic Woman Ltd.'s Motion for Preliminary Injunction, Declaration of David Kavanagh with accompanying exhibits, Declaration of Jonathan Hochwald, and Declaration of Peter Herbert to be served upon Defendant via hand delivery addressed as follows:

WLIW, LLC
450 West 33rd Street
New York, N.Y. 10001



Richard S. Mandel